DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200040038

JUL 13 2000

Uniform Issue List Numbers: 401.06-00, 408.06-00

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OP:E:EP:TI

Legend:

Individual A = **********
Individual B = **********
Decedent A = **********
Decedent B = **********
Taxpayer C = **********
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Taxpayer D = **********
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Individual Retirement Arrangement (IRA) X = **********
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Individual Retirement Arrangement (IRA) Y = **********
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Individual Retirement Arrangement (IRA) Z = **********
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Dear **********:

This is in response to a letter dated November 2, 1999, as supplemented by additional correspondence dated January 3, January 11, January 27, April 28, and June 12, 2000. In that correspondence, your authorized representative requested a private letter ruling on your behalf regarding certain required distributions of assets from the individual retirement arrangements (IRAs), previously owned by your parents, Decedents A and B, named above. In support of your request, your authorized representative also submitted the following facts and representations:

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Individuals A and B were spouses and the parents of Taxpayers C and D. Individual A owned IRAs X and Y; Individual B owned IRA Z (a custodial account established under section 408(a) of the Code). Both A and B had attained the "required beginning date" as defined in section 401(a)(9)(C) of the Internal Revenue Code during the early years of the 1990's, and had commenced making required withdrawals from their IRAs. At that time, Individuals A and B had reciprocal beneficiary designations: Individual A named Individual B as the beneficiary of IRAs X and Y; Individual B named Individual A as the beneficiary of IRA Z. Neither Taxpayer C nor D was named as a contingent beneficiary of IRAs X, Y, or Z.

Prior to his death, Individual A had received annuitized distributions from IRAs X and Y, based on his single life expectancy, with the amount of the annuity recalculated annually. Individual A, the father of Taxpayers C and D, died in November, 1993.

On January 1, 1994, Individual B transferred the assets of IRAs X and Y to IRA Z, and commenced receiving distributions from IRA Z, based on her single life expectancy. As of January 1, 1994, 70.4 percent of IRA Z consisted of assets attributable to Decedent A and IRAs X and Y. The remaining 29.6 percent of IRA Z assets belonged to Individual B in IRA Z before the transfer. The transferred assets and gains, losses and distributions attributable to these amounts have been accounted for since the transfer.

The terms of IRA Z provide that, absent a specific election to the contrary, the amount distributed to the IRA owner will be recalculated annually. Because Individual B made no such election, distributions to her were recalculated annually pursuant to the terms of her IRA. In March, 1994, Individual B amended the beneficiary designation of IRA Z, naming her two children, Taxpayers C and D, as equal beneficiaries. B, the mother of Taxpayers C and D, died in April, 1999.

Taxpayers C and D propose to distribute 29.6 percent of the total assets remaining in IRA Z--the amounts therein attributable to their mother's (Decedent B's) IRA--on or before December 31, 2000. Taxpayers C and D also propose to distribute the remaining assets in IRA Z, i.e., the 70.4 percent of total IRA assets attributable to their father's (Decedent A's) IRA which was transferred to IRA Z on January 1, 1994, over the life expectancy of the older beneficiary, Taxpayer C. Taxpayer C was born in 1955; Taxpayer D was born in 1959.

Based on the preceding facts and representations, you request a ruling that distributions of the 70.4 percent of IRA Z assets--the amounts attributable to Decedent A's IRAs--over the life expectancy of

Taxpayer C (based on C's "adjusted age") will meet the requirements of section 401(a)(9) of the Code as applied to IRA Z by virtue of section 408(a)(6).

Section 408(a) of the Code defines an individual retirement account as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Section 408(a)(6) states that under regulations prescribed by the [Treasury] Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained. Section 401(a)(9) of the Code sets forth the general rules applicable to required minimum distributions from qualified plans.

Section 401(a)(9)(A)(ii) of the Code provides, in pertinent part, that a trust shall not constitute a qualified trust unless the plan of which the trust is a part provides that the entire interest of each employee[1] will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the joint life expectancies of such employee and designated beneficiary.)

With respect to IRAs, section 401(a)(9)(C) of the Code provides that the term "required beginning date" means April 1 of the calendar year immediately following the calendar year in which the owner of that IRA attains age 70½.

Section 401(a)(9)(B)(i) of the Code provides that, where distributions have begun under subparagraph (A)(ii), a trust shall not constitute a qualified trust unless the plan provides that if:

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest is distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of the employee's death.

Section 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4(b) ("Proposed Regs.") provides, in pertinent part, that the

[1]Unless indicated otherwise, all references in IRC § 401(a)(9) to an "employee" and his or her beneficiaries should be read to mean the IRA owner and his or her beneficiaries.

only beneficiary who may elect to treat the beneficiary's entire interest in the trust (or the remaining part of such interest if distribution thereof has commenced to the beneficiary) as the beneficiary's own account is the individual's surviving spouse. If the surviving spouse makes such an election, the distribution would then be subject to the distribution requirements of section 401(a)(9)(A), rather than section 401(a)(9)(B). An election to claim the IRA as the surviving spouse's own will be considered to have been made if any amounts in the account: (1) have been rolled over or transferred, in accordance with the requirements of § 408(d)(3)(A)(i) into an IRA for the benefit of such surviving spouse); or (2) have not been distributed within the appropriate time period applicable to the decedent under § 401(a)(9)(B). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Section 1.401(a)(9)-1 of the Proposed Regs., Q&A D-2(a)(1) provides, in pertinent part, that designated beneficiaries are only individuals who are designated under the plan. In general, it provides that an individual may be designated as a beneficiary under the plan either by its terms or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary.

Section 1.401(a)(9)-1, Q&A D-3(a) of the Proposed Regs. provides that, for purposes of calculating the distribution period described in § 401(a)(9)(A)(ii) of the Code (for distributions before death), the designated beneficiary will be determined as of the employee's required beginning date. If, as of that date, there is no designated beneficiary under the plan to receive the employee's benefit upon the employee's death, the distribution period is limited to the employee's life (or a period not extending beyond the employee's life expectancy).

Section 401(a)(9)(D) of the Code permits an employee and his or her spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1, Q&A E-8(a) provides in pertinent part that the joint life and last survivor expectancy of the employee and spouse is recalculated annually using the employee's and spouse's attained age in each distribution calendar year using the employee's (and spouse's) attained ages as of the employee's (and spouse's) birthdays in that distribution calendar year. Upon the death of the employee (or the employee's spouse) the recalculated life expectancy of the deceased is reduced to zero in the year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

Section 1.401(a)(9)-1, Q&A E-5(a) of the Proposed Regs. provides that if more than one individual is designated as a beneficiary with respect to an IRA, the designated beneficiary with the shortest life expectancy will be treated as the designated beneficiary for purposes of determining the § 401(a)(9) distribution period.

Section 1.401(a)(9)-1, Q&A E-7(c) of the Proposed Regs. states that a plan may adopt a provision that permits the employee (or spouse, in the case of distributions described in section 401(a)(9)(B)(iii) or (iv) of the Code) to elect the applicability or inapplicability of section 401(a)(9)(D). If such an election is permitted, the employee (or spouse) must elect whether or not life expectancy will be recalculated no later than the time of the first required distribution under section 401(a)(9).

Section 1.401(a)(9)-1, Q&A E-8 of the Proposed Regs. provides, in pertinent part, that the life expectancy of a non-spouse beneficiary may not be recalculated. Section Q&A E-8(b) provides further guidance on calculating the applicable life expectancy when the employee's life expectancy is being recalculated and the life of the designated beneficiary is not recalculated. Such applicable life expectancy is the joint and last survivor expectancy using the employee's [or the surviving spouse's] attained age as of the individual's birthday during the distribution calendar year, and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is his or her attained age in the calendar year in which the IRA's owner attains age 70½, reduced by one for each calendar year which has elapsed since that calendar year.

In this case Decedent B's required beginning date for IRA Z had occurred while Decedent A, and not Taxpayers C and D, was still the named beneficiary for that IRA. When Decedent A died in 1993, it reduced his recalculated life expectancy for purposes of IRA Z to zero for the 1994 distribution calendar year. Decedent B's death in 1999 also reduced her recalculated life expectancy for those IRA Z funds attributable to her to zero in the 2000 calendar year. Therefore, those IRA assets attributable to Decedent B must be distributed to the current designated beneficiaries, Taxpayers C and D, no later than December 31, 2000. The IRA Z custodian and Taxpayers C and D will meet the minimum distribution requirements of section 401(a)(9)(D) of the Code and section 1.401(a)(9)- 1, Q&A E-8(a) by the distribution of the entire remaining balance in IRA Z attributable to Decedent B, prior to the last day of the last year in which the sole remaining life expectancy pertaining to that remaining balance was reduced to zero. This distribution from IRA Z is an amount equal to 29.6 percent of IRA Z's assets as of January 1, 1994, (the date of the transfer of assets from IRAs X and Y to IRA Z) adjusted for gains, losses, and required distributions through the date of distribution in calendar year 2000.

Regarding the assets in IRA Z attributable to Decedent A, then Individual B exercised her rights as surviving spouse and took ownership of those assets by transferring the entire account balances from IRAs X and Y to IRA Z in January of 1994. In this case Individual B accomplished her transfers during the 1994 calendar year. Thus, B created an account balance in 70.4 percent of IRA Z assets for purposes of the required distribution rules as of December 31, 1994. The required beginning date for distributions of the assets transferred (in January 1994) from IRAs X and Y to IRA Z was, therefore, December 31, 1995. In accordance with the rule given above, Individual B began receiving required distributions from the rollover portion of IRA Z during 1995. (B took a discretionary distribution in 1994.)

While the Proposed Regulations do not specifically answer the question of whether Taxpayer C can be considered the designated beneficiary for purposes of Code sections 401(a)(9) and 408(a)(6), in the absence of final regulations, such issues may be resolved by a reasonable interpretation of the Proposed Regulations and statutory provisions. Accordingly, it is concluded that Taxpayer C may be considered the designated beneficiary of IRA Z for purposes of section 408(a)(6) of the Code, since he was the older of the two beneficiaries named by then Individual B before the December 31, 1995, required distribution date for the inherited portion (70.4 percent) of IRA Z.

Decedent B named Taxpayers C and D as co-beneficiaries of assets in IRA Z in March, 1994. This beneficiary designation was made in a timely manner prior to the required beginning date for distributions of assets transferred from IRAs X and Y to IRA Z. Therefore, had she chosen, Decedent B could have received distributions from IRA Z over her and Taxpayer C's joint life expectancy, Taxpayer C being her oldest designated beneficiary. Such distributions would have complied with the minimum required distribution rules. Instead, Taxpayer A chose to receive distributions over her single life expectancy recalculated. In effect Decedent B received distributions in amounts greater than the required minimums, or, in other words, chose to accelerate receipt of her lifetime distributions.

Decedent B's election to accelerate distributions does not affect the determination, above, that B's timely designating Taxpayers C and D as her co-beneficiaries resulted in Code section 401(a)(9) required distributions being those computed using Decedent B's and Taxpayer C's joint and survivor life expectancy. Thus, although Taxpayer C's life expectancy was not used in computing lifetime distributions to B, it may be used to determine post-death required distributions to Decedent B's beneficiaries. In short, the "at least as rapidly rule" will not be violated if post-death distributions are calculated using the life

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expectancy of Decedent B's oldest designated beneficiary, Taxpayer C, since Decedent B could have used Taxpayer C's life expectancy to determine the amount of her required lifetime distributions.

In this case, as noted above, Decedent B's life expectancy was being recalculated. Thus as of the end of 2000, the calendar year following the year of her death, her life expectancy for purposes of Code section 401(a)(9) is reduced to zero. Therefore, required distributions to Decedent B's designated beneficiaries for the 70.4 percent of IRA Z assets transferred to IRA Z from IRAs X and Y in 1994 will be those computed using the adjusted age and life expectancy of Taxpayer C, her oldest designated beneficiary.

Therefore, it is ruled that, for calendar years after 1999, distributions of the 70.4 percent of IRA Z assets--the amounts attributable to Decedent A's IRAs--over the life expectancy of Taxpayer C (based on C's adjusted age as defined under section 1.401(a)(9)-1, Q&A E-8(b) of the Proposed Regulations) will meet the requirements of sections 401(a)(9) of the Code as applied to IRA Z by virtue of section 408(a)(6).

This ruling is directed solely to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office a copy of this letter is being sent to your authorized representative.

Sincerely,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

Enclosures:

- Deleted Copy of this Letter
- Notice of Intention to Disclose, Notice 437
- Copy of Notification Letter (Form 1155) to Authorized Representative

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